



POLICE DEPARTMENT

June 20, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Maria Leah Macchia
Tax Registry No: 911533
Transit District 1
Disciplinary Case No. 84802/08

The above-named member of the Department appeared before me on February 16, 2011, charged with the following:

1. Said Police Officer Mariale¹ Macchia, assigned to Transit District Number One, on or about April 28, 2008, while on-duty, within the confines of Transit District Number One, having been directed twice by New York City Police Sergeant Martha Lequerica to return to the locker area to adjust her uniform, said Officer did fail and neglect to comply with said orders.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

2. Said Police Officer Mariale Macchia, assigned to Transit District Number One, on or about April 28, 2008, while an on-duty, within the confines of Transit District Number One, did fail and neglect to comply with order by walking away from New York City Police Sergeant Martha Lequerica after having been ordered to return by said Sergeant.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

3. Said Police Officer Mariale Macchia, assigned to Transit District Number One, on or about April 28, 2008, while on-duty, within the confines of Transit District Number One, was discourteous to New York City Police Sergeant Martha Lequerica, in that said Officer stated to said Sergeant, in sum and substance, "I do not have listen to you," and

¹, The Respondent's first name was changed to "Maria Leah" effective January 5, 2010, as per Personnel Order No. 269 of 2010.

“I’m not going to listen to you until you treat me like a human being,” after ignoring said Sergeant’s order to stop and talk to said Sergeant.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT- GENERAL
GENERAL REGULATIONS

4. Said Police Officer Mariale Macchia, assigned to Transit District Number One, on or about April 28, 2008, while on-duty, within the confines of Transit District Number One, failed to perform her duties in uniform as indicated on roll call or as directed by competent authority, in that said Officer was not properly dressed in her uniform after her tour began and after being directed by the School Roll Call Coordinator, Sergeant Martha Lequerica.

P.G. 201-21, Page 1, Paragraph 4 – DUTIES AND RESPONSIBILITIES;
POLICE OFFICER

P.G. 204-01, Page 1, Paragraph 5 – UNIFORMS AND EQUIPMENT
GENERAL UNIFORM REGULATIONS

The Department was represented by Rudolph Behrmann, Esq., Department Advocate’s Office, and Respondent was represented by Stuart London, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review.

DECISION

Respondent is found Guilty of Specification Nos. 1, 2 and 3. The Respondent is found Not Guilty of Specification No. 4.

Introduction

This case is about the Respondent, at eight o’clock in the morning, being present in the roll call area while Sergeant Lequerica was conducting roll call. At that time, the Department alleges that the Respondent was in front of the room and after taking her gun

belt off and putting it on a table, was adjusting her uniform. The Sergeant ordered the Respondent two times to finish fixing her uniform in the locker room, but the Respondent went to the radio room to complete the task. After roll call Lequerica saw the Respondent outside the roll call area and attempted to speak to her regarding her failure to comply with Lequerica's orders. According to the Department, the Respondent's response was that she did not have to listen to Lequerica and will not listen to her until she treats her like a human being. The Respondent then walked away from the area and ignored Lequerica's order to stay with Lequerica while she spoke to her.

The Respondent denied committing the aforementioned misconduct and refused a Command Discipline with an offer to forfeit a one-day penalty and a transfer out of the unit to satisfy the allegations in this case.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Martha Lequerica, Police Officer Selwdyn Close and Police Officer Carl Brown as witnesses.

Sergeant Martha Lequerica

Lequerica is a 17-year member of the Department currently assigned to Transit District 1. She has been a sergeant for seven years.

Lequerica testified that on April 28, 2008, she was conducting roll call when she saw the Respondent enter the roll call area and noticed that she was adjusting her

uniform. She stated, "From what I recall, she had her gun belt on top of a cabinet and...she was adjusting her trousers, tucking her shirt into her trousers." Lequerica was standing behind a podium and believed the Respondent was four to five feet to her left. She further recalled that "her trousers were unbuttoned and she was tucking her shirt into her trousers...Unbuttoned and the seams of the trousers, where the button and the zipper meet, they were flapped open."

Lequerica stated that she was facing the platoon and the Respondent "was actually facing [her]." She then stopped the roll call and as the Respondent stood next to her, Lequerica turned to her and said, "Macchia, just go into the female locker room and finish adjusting yourself. I know you're here." She told the Respondent to do this because she felt it was inappropriate for her to fix her uniform in front of others in the muster room. The Respondent did not listen to her and Lequerica again told her to go to the locker room. After telling her the second time the Respondent grabbed her gun belt and walked out of the muster room.

After Lequerica finished roll call, she walked out of the muster room and saw the Respondent in the radio room adjusting her uniform. Lequerica approached her and asked her why she did not go into the locker room. Lequerica did not remember what response or exchange they had but she recalled that the Respondent "stormed out of the radio room...and said that she didn't have to listen to me." Lequerica took her statement to mean that "she doesn't have to listen to a supervisor. She can do whatever she feels is right." She explained that when she saw the Respondent in the radio room, "From what I remember, I don't think her trousers were unzipped. You know what? I don't remember a hundred percent, but I think she had her gun belt on at the time so her trousers had to be

buttoned. I think she was either straightening out her shirt on top or tucking her shirt in.” When asked by the Court if the Respondent had finished what she was doing, Lequerica stated, “Yes.”

Lequerica’s concern when she approached the Respondent in the muster room was that she did not go to the locker room to get dressed. Lequerica then testified that she did not “recall exactly what she said so I’m not going to say something that I don’t recall. From there she just stormed out of radio room and I said: Macchia, come back. And she stated: I don’t have to listen to you; as she was walking into the female locker room, which was outside the radio room to the left.” The Respondent then went into the female locker room.

On cross-examination, Lequerica testified that she did not recall being mad at the altercation she had with the Respondent on April 28, 2008. She also did not remember sending her on post alone or that she alerted the officers at roll call about a verdict that was just handed down after trial on a high profile case. While she did not remember those events, she recalled that the Respondent had a solo post on that day. She also stated that she did not get into a verbal altercation with the Respondent she “gave her instruction” which the Respondent did not listen to. She did not punish the Respondent by sending her out on her own—that was her assigned duty that day.

When Lequerica was asked if she remembered that day, she stated, “Not clearly, no, not a hundred percent...I don’t remember the percentage. I vaguely remember the day.” Lequerica reiterated that the Respondent was adjusting her pants in the muster room and she had to ask her twice to go to the female locker room. While the radio room

is open to all members, she stated that it was not the appropriate place to get dressed. She added that "open trousers in an open area was inappropriate."

Lequerica did not remember if the Respondent's trousers were opened or closed when she was in the radio room; she could not remember if her gun belt was on or if she waved her finger in the Respondent's face. Nor did she remember if she told the Respondent that if she told her to do something "you do it" or that her (the Respondent's) attitude was going to have to stop. When she was asked if she remembered anything that happened in the radio room, she replied, "I vaguely remember some things. This is three years ago." She stated that, in the muster room, the Respondent's trousers "were unzipped" and her shirt was "tucked in." She did not remember if the tail part of her shirt was tucked in or out. She did not see the Respondent take off her gun belt or had any recollection if it was off when she walked into the room. She also could not remember if the Respondent turned away from her when she was trying to button her top button. When reminded that she previously testified that the Respondent was facing her in the muster room she stated, "She was facing the direction of me but she was to the left of me, so it wasn't a direct face-to-face."

Lequerica further testified that the Respondent did not leave immediately after she told her to, but did leave right away after she told her the second time. Lequerica remembered seeing the Respondent leave the radio room and go into the female locker room, but did not remember the Respondent saying that she will only talk to her if Lequerica treated her like a human being.

After the Respondent left the locker room, Lequerica asked her why she was not taking her post. She stated that she actually did not remember asking her that question

but “read it on the transcript” from her Department interview. Other than that, she only “vaguely remembered it.” She also did not remember the Respondent saying that she wanted to speak to a Patrolmen’s Benevolent Association (PBA) delegate or her concern for going on patrol alone given the high profile verdict of the day.

Lequerica stated that the Respondent did not say to her that she did not have to listen to her when told to go to her post. She added that she could not understand what the Respondent was saying after being told to go to post, but she did go to her post after telling her that she was waiting for Police Officer McKeon. Lequerica stated that less than five minutes passed after she told the Respondent to go to post and her leaving for her post. She added that it was actually 10 seconds after the last part of their conversation when she left for the post. She was not disrespectful to Lequerica when she came from the locker room, she just left the command. Nor was she disrespectful to Lequerica in the muster room and Lequerica did not remember “the exact words” that were said in the radio room.

Police Officer Selwdyn Close

Close is a 17-year member of the Department assigned to Transit District 1. He was present in the muster room during the incident between the Respondent and Lequerica where the Respondent had her gun belt on a table and was adjusting her uniform. As the Respondent was adjusting her uniform, he heard Lequerica tell her to do that somewhere else. He did not hear her tell the Respondent to go somewhere specific, just basically to go out of the room. When the Respondent did not respond, Lequerica asked her again in a more commanding tone and the Respondent left the room.

At one point, he saw Lequerica leave the muster room and he then heard a commotion outside [the muster room] and he then saw the Respondent re-enter the muster room and heard Lequerica calling for her to come back outside. When Close exited the muster room and walked by the radio room, he heard the Respondent tell Lequerica, "Don't disrespect me."

On cross-examination, Close stated that when Lequerica first told the Respondent to leave the room, the Respondent was trying to speed up the process of fixing her uniform. He stated that, other than fixing the top portion of her pants, the rest of her uniform was in place. When Lequerica told her to leave the muster room, Close did not hear the Respondent say anything to her. He also did not hear the Respondent disrespect Lequerica.

Police Officer Carl Brown

Brown is an 18-year member of the Department currently assigned to Transit District 1. He testified that he was present in the muster room during the incident between the Respondent and Lequerica. As the Respondent was adjusting her uniform, Brown heard Lequerica tell her to step out of the room to fix it. The Respondent's gun belt was on a table. At first, it appeared that the Respondent did not hear Lequerica but when she was told again to leave, she gathered her things and left the room.

After the Respondent and Lequerica were out of the muster room and in the hallway, Brown also heard the Respondent say "I'm 43 years old. You don't have to yell and scream at me." He did not hear Lequerica yelling at the Respondent. He then saw that the Respondent was upset and going towards the locker room.

On cross-examination, Brown stated that the Respondent did not go out of her way to be a distraction while in the muster room. He also did not see the Respondent do anything disrespectful when asked to leave the muster room. While the Respondent and Lequerica were in the hallway he did not hear Lequerica say anything to the Respondent.

The Respondent's Case

The Respondent testified in her own behalf.

The Respondent

The Respondent is an 18-year member assigned to Transit District 1. She testified that on April 28, 2008, she entered the muster room where Lequerica was conducting roll call. When she entered the room, her shirt was buttoned and tucked into her trousers and she had her gun belt on. After she entered the room, however, she realized that the top button of her pants was unsnapped. At that point she was facing Lequerica.

She then excused herself to Lequerica and walked towards a column in the room where she was now facing a wall. Her back was facing towards the officers in the room. She tried to snap the button back in place but that did not work. She then decided "it would be a lot easier if I take the gun belt off and quickly snap it back so I could continue to go back, you know, in the roll call." Lequerica then told her to "do that in the locker room. The second time she asked me to leave, to do it in the locker room again, but I told her that I was done. And I said I was done what I was doing, and she didn't let me—she didn't let me do that at all, so I followed exactly what she asked me the second time. I

picked up my gun belt and I left the muster room.” She further explained that she was done fixing her pants but still had to put her gun belt on.

Once she left the muster room, she did not go to the locker room, she went to the radio room because it was empty and because she wanted to get back to roll call. While in the radio room she “was trying to put my gun belt on. I believe I was putting my keeper, that’s to set the gun belt in the right spot, and I was about to leave the radio room when Sergeant Lequerica walked in...and she prevented me from leaving the radio room.” She stated that at that point her gun belt was on—“it was done.”

The Respondent stated that Lequerica then put her finger in her face and told her that when she tells her to do something she expected her to do it and that the Respondent had “to stop or otherwise you’re going to have to find another squad.” The Respondent further stated that when Lequerica was speaking to her she was also blocking her from leaving the room with her body. At that point, the Respondent asked Lequerica “Is that a threat?” and then left the room to “[de]fuse the situation”. The Respondent then went to the muster room. She added that Lequerica yelled at her to get out of the muster room, but the Respondent did not listen to her “scream” at her and stayed where she was. The reason she stayed in that room was because she did “not want to make the situation worse than it is.” At one point the Respondent left the muster room and went to the locker room. When she left the locker room, she went to the front desk where Lequerica was and was asked why she was not on her post and she told Lequerica that she was waiting for a PBA delegate. Lequerica told her to go to her post and she did.

On cross-examination, the Respondent stated that it was when she was standing at roll call in the muster room that the snap on her pants was unfastened. She stated that she

excused herself to Lequerica because she was afraid to step out of the room because Lequerica “is always angry and yelling, and...it’s just a matter of time that she’s going to get me for whatever reason...When I noticed my pants was unsnapped, I went like this, saying excuse me. Can you excuse me for a minute? And I turned around and walked toward the column and face the wall right away. That’s how I did it.”

The Respondent stated that when Lequerica asked her the first time to leave the room and go to the locker room, she was fixing her pants. When she asked her the second time, she was almost finished fixing her pants and thought “so why do I have to leave the muster room when I know that I could just do it right there?...for a few seconds.” When she did not leave the first time she was told, she believed that Lequerica was just making a statement and she did not think she was disregarding Lequerica. When she was told to leave the second time, she left.

The Respondent stated that when she left the muster room, she did not go to the locker room because she was already done fixing her pants; she just needed to put on her gun belt. Her gun belt was already on when Lequerica walked into the radio room. She stated that she walked away from Lequerica because she was “heated up” and she “wasn’t going to go back to a situation that she’s already totally angry.” She explained that she told Lequerica that she “will not talk to you unless you treat me like a human being.” She did not recall saying to Lequerica, “I won’t listen to you.” She felt that if she continued to talk to her, the situation would have become worse than it was, so she left the room and went to the locker room. Prior to going to the locker room, she walked to the muster room and it was at that point that Lequerica told her to come back.

On redirect examination, she said that she was not trying to hide the fact that she was having a problem with her pants from Lequerica. In her mind, it was only going to take a couple of seconds to fix. That was why she walked to the column and turned her back to the other officers in the room. The first time Lequerica told her to leave, she believed it was a statement, not an order. The second time, Lequerica's voice was louder and she believed that was an order and she left the room.

She went to the radio room and was able to fix herself there. The snap on her pants was already fixed. The only thing she needed to do was fix her gun belt which she did before Lequerica came into the room. There was no one else in the room at the time. When Lequerica told her to come back, the Respondent walked to the muster room and she did not go back to Lequerica.

FINDINGS AND ANALYSIS

In Specification No. 1 the Respondent is charged that after being directed twice by Sergeant Martha Lequerica to return to the locker area to adjust her uniform she failed to comply with the order by not going to said locker room.

After the Respondent entered the muster room, she noticed that the top button of her pants was opened. She tried to close the button, but her gun belt was in the way so she moved to a place in the room by a column and removed her gun belt and placed it on the table. While she attempted to remedy the situation, Lequerica told her to go to the female locker room to finish adjusting her uniform in the privacy of that room. The Respondent believed she was almost done fixing the problem so she ignored Lequerica and continued adjusting her clothes. It should be noted that she did not have her gun belt

on—it was still lying on the table. When the Respondent did not listen to her, Lequerica again told to go to the female locker room. At that point, the Respondent picked up her gun belt and left the muster room.

Once outside the muster room, the Respondent did not go to the locker as directed. Instead she went to the radio room which was located near the muster room. The Respondent stated that the reason she went to that room was because she was almost done adjusting her uniform and there was no need to go to the locker room. All that was left for her to do was to strap on her gun belt and make sure it was properly in place on her waist.

This Court finds that the Respondent was not excused from obeying Lequerica's directive to go to the locker room because she believed that she was almost done adjusting her uniform and decided to take it upon herself to go to the radio room. She believed that since the radio room was empty, it was a convenient place to accomplish her goal and return to the muster room. What the Respondent failed to realize, however, was that she was given a directive by a superior officer, which she had to obey. There was nothing improper with Lequerica wanting her to fix her uniform in a more private setting away from fellow officers. Had the Respondent gone to the locker room, there would have been no disobeying the directive even though Lequerica told her twice to do so. Unfortunately, she failed to follow that directive and went to another room which was also a room that any officer could have entered while she was completing the adjustment to her uniform.

Accordingly, the Respondent is found Guilty of Specification No. 1.

In Specification No. 2, the Respondent is charged with failing to comply with a order given by Lequerica by walking away from her after being ordered not to. In Specification No.3, the Respondent is charged with being discourteous to Lequerica where the Respondent stated in sum and substance, "I don't have to listen to you" and I'm not going to listen to you until you treat me like a human being" after Lequerica ordered her to stop and talk to Lequerica.

At one point, Lequerica finished the roll call and walked out of the muster room where she saw the Respondent adjusting her uniform in the radio room. When Lequerica asked the Respondent why she had not gone to the locker room as ordered, she recalled that the Respondent stormed out of the room and in response to Lequerica telling her to come back, the Respondent did not comply by telling her that she did not have to listen to her.

The Respondent admitted that she left Lequerica in the radio room because Lequerica was angry. She heard Lequerica telling her to come back to where Lequerica was, but refused to do so because she claimed that she wanted to defuse the situation. The Respondent admitted telling Lequerica that she would not talk to her unless she treats her like a human being, but, she did not recall saying to Lequerica that she would not listen to her.

Officer Close, who was at roll call in the muster room, heard Lequerica calling for the Respondent to return to her. He saw the Respondent leave the muster room but did not see where she went at that time. He also heard the Respondent tell Lequerica to not disrespect her, but did not hear the Respondent say that she did not have to listen to her.

Officer Brown was also at roll call and he heard the Respondent say to Lequerica “I’m 43 years old. You don’t have to yell and scream at me.” He did not hear Lequerica scream at her.

This Court finds that here, again, the Respondent disregarded the fact that a superior officer was giving her directions to return after she walk away from Lequerica. Even if Lequerica was angry, the Respondent should not have ignored her directive simply because she thought she was angry. She should have returned to resolve the matter and not make it worse by ignoring Lequerica’s directive and by using words similar to those charged to demand respect from Lequerica.

Accordingly, the Respondent is found Guilty of Specification Nos. 2 and 3.

In Specification No. 4, the Respondent is charged with failing to perform her duties in uniform as indicated on the roll call in that she was not properly dressed in her uniform after her tour began and after being directed by Lequerica to do so.

While the evidence showed that the Respondent noticed that her button on the pants of her uniform had became undone as she entered the muster room and that she took immediate steps to correct the problem, there was no evidence that showed that she was not properly dressed for duty. She did not enter the room dressed in civilian attire or missing important pieces of her uniform. Once she realized that her button was undone she went to a part of the room where she believed she was out of the way of the other officers and attempted to correct the problem. Part of the solution was for her to remove her gun belt. This, in and of itself, cannot be viewed as her being out of uniform but a step towards rectifying the problem. In addition, the Respondent did not refuse

Lequerica's directive to get properly dressed; she disobeyed her directive to go to the female locker room to finishing solving the problem (See Specification No. 1).

Accordingly, the Respondent is found Not Guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on January 13, 1993. Information from her personnel record that was considered in making this penalty recommendation is contained in a attached confidential memorandum.

The Respondent has been found Guilty of failing to comply with directives given by Lequerica and also being discourteous to her. While the Respondent's non-compliance with Lequerica's directives was not in response to an order involving her operational duties as a police officer, it was nevertheless a directive made by a superior officer. As such, a police officer cannot choose when or where she or he will obey the directives of a superior officer. If this were so, then the necessary operation of the Department would come to a screeching halt.

Based on the foregoing, it is recommended that the Respondent forfeit a penalty of 15 vacation days.

Respectfully submitted,

John Grappone by M. Kelly

John Grappone
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARIA LEAH MACCHIA
TAX REGISTRY NO. 911533
DISCIPLINARY CASE NO. 84802/08

The Respondent received an overall rating of 3.5 “Above Competent,” 3.0 “Competent” and 3.5 “Above Competent” on her last three annual performance evaluation.

The Respondent has no prior formal disciplinary record.

For your consideration.

John Grappone
by M. King

John Grappone
Assistant Deputy Commissioner – Trials